

MINUTES OF MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JUNE 6, 2013

The Maple River Water Resource District met on June 6, 2013, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Gerald Melvin, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Sean M. Fredricks, Attorney for the Board; Mike Opat, Engineer for the Board; Kurt Tompkins, United States Fish and Wildlife Service; Pat Downs, Red River Retention Authority; Jason Benson, Cass County Engineer; Keith Weston, Natural Resources Conservation Service; Brian Strom, representing Kieffer Farms; David Braaten, Derek Swenson and Dean Andvik, property owners in Davenport Township.

Pontiac Township Improvement District No. 73

Purchase Agreements have gone out to property owners where right-of-way is needed for Pontiac Township Improvement District No. 73. Some are receptive to the project, but believe the payment offered is too low and / or the assessments are too high.

Kurt Tompkins informed the Board that the U.S. Fish and Wildlife Service (USFWS) will not allow the project to cross their property. The project plans called for a section of buried pipe across USFWS property. The Board expressed its displeasure to this sudden change after having incurred the cost to develop the project with USFWS input, taking it to a vote of the property owners and when the project is about to be constructed. Mr. Tompkins said they were looking at the impact versus the benefit and they cannot justify it. Chairman Olson questioned there being impacts from a buried pipe. Mr. Tompkins said they would need to open the ground to install the pipe. Manager Melvin asked if they were fully informed of the plan and why they took so long to arrive at this decision. Mr. Tompkins said they received the project plans a couple of weeks ago.

The Board discussed various options to accomplish the project without going through USFWS property. Purchasing or trading property with the USFWS was also discussed. Mr. Tompkins will check into that. Mike Opat will also work with the property owner involved about relocating the project alignment.

Upper Maple River Dam

A Traditional Cultural Properties survey was completed for the Upper Maple River Dam Project. Information attained from the survey will be sent to the Corps of Engineers.

Mr. Opat hopes the Environmental Assessment will be finalized in a couple months. The permit application can then be submitted. The cost estimate will be updated and the project could be taken to a vote this fall.

Lake Bertha Flood Control Project No. 75

Wes Beilke continues to circulate a Bond/Petition document regarding Lake Bertha Flood Control Project No. 75. Jason Benson indicated he would request approval from the Cass County Commission to pay \$10,000 towards the Bond. The Cass County Wildlife Club may also contribute funds to the project.

Drain #34 – bridge repair and replacement between Sections 19 and 30 of Normanna Township

Mr. Opat submitted a hydraulic evaluation of the bridge on Drain #34 between Sections 19 and 30 of Normanna Township. The bridge needs to be repaired or replaced. Jason Benson asked the Board if there are any plans to reconstruct the drain through this area. If so, the crossing could be part of that project. If not, a short term solution needs to be considered. Farmers in the area do not want the bridge taken out. The county will look into the cost and projected life of various alternatives.

Application to Install a Subsurface Drain No. 20131 for Adrian Kieffer in the NW 1/4 and NE 1/4 of Section 23 in Wheatland Township

The Board reviewed an *Application to Install a Subsurface Drain No. 20131* dated March 7, 2013, for Adrian Kieffer. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in the N 1/2 of Section 23 in Wheatland Township, Cass County, North Dakota. The project will include five gravity outlets. Two of the outlets will be northeast of the railroad tracks, in the north railroad ditch; the discharge from both of these outlets will flow east through the railroad ditch until intersecting the east section line; from there, the tile discharge will flow south through the west road ditch along Cass County Highway No. 10. The other three gravity outlets will lie south of the railroad tracks, and all three will discharge to the east into the west road ditch of Cass County Highway 10 as well; all of the tile discharge will flow south through the west road ditch of Cass County Highway No. 10, along the east boundary of the SE 1/4 of Section 23 and the NE 1/4 of Section 26.

The Board provided *Thirty-Day Notices* as required under N.D. Cent. Code Section 61-32-03.1 to BNSF Railway Company, Paul Faught, and Connie Kingsley as landowners within one mile of the outlets. None of the downstream landowners submitted any comments to the Board.

According to records on file with the Cass County Recorder's Office, Adrian and Mark Kieffer own the N 1/2 of Section 23. With regard to the downstream properties, Paul Faught owns the E 1/2 of the SE 1/4 of Section 23 where the tile discharge will flow, and Connie Kingsley owns the NE 1/4 of Section 26.

It was moved by Manager Suhr and seconded by Manager Melvin to approve *Application to Install a Subsurface Drain No. 20131* dated March 7, 2013, for Adrian Kieffer in the N 1/2 of Section 23 in Wheatland Township, subject to the following conditions:

1) That Applicant obtain and record (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the following parcels in Wheatland Township, Cass County, North Dakota:

- a. E 1/2 of the SE 1/4 of Section 23; and
- b. E 1/2 of the NE 1/4 of Section 26;

2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;

3) That Applicant obtain written permission from Cass County to discharge into, or otherwise utilize, any of its county highway right of way;

4) That Applicant notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;

5) That Applicant notify the Maple River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and

6) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Drain No. 20132 for George and Marilyn Loegering in the NW 1/4 and NE 1/4 of Section 12 in Howes Township

The Board reviewed an *Application to Install a Subsurface Drain No. 20132* dated March 14, 2013, for George and Marilyn Loegering. Brian Strom was present on behalf of Kieffer Farms, the tenant and contractor. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicants seek to install a drain tile system in the N 1/2 of Section 12 in Howes Township, Cass County, North Dakota. The project will include a gravity outlet along the east boundary of the N 1/2 of Section 12; the outlet will discharge into the west road ditch of Cass County Highway 7. The discharge will flow

south in the west road ditch of Highway 7, along the east boundary of the SE 1/4 of Section 12 and the NE 1/4 of Section 13.

The Board submitted *Thirty-Day Notices* to downstream landowners within one mile of the outlet in accordance with N.D. Cent. Code Section 61-32-03.1; more specifically, the Board provided *Thirty-Day Notices* to Cass County regarding the Highway 7 road ditch, and the owners of the SE 1/4 of Section 12 and the NE 1/4 of Section 13. None of the landowners have submitted any comments.

According to records on file with the Cass County Recorder's Office, George and Marilyn Loegering own the N 1/2 of Section 12; Dorothy Hoffmann owns the SE 1/4 of Section 12; and Larry and Margaret Hoffmann own the NE 1/4 of Section 13.

It was moved by Manager Melvin and seconded by Manager Suhr to approve *Application to Install a Subsurface Drain No. 20132* dated March 14, 2013, for George and Marilyn Loegering in the N 1/2 of Section 12 in Howes Township, subject to the following conditions:

- 1) That Applicants obtain and record (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the following parcels in Howes Township, Cass County, North Dakota:

- a. E 1/2 of the SE 1/4 of Section 12; and
- b. E 1/2 of the NE 1/4 of Section 13;

- 2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;

- 3) That Applicants obtain written permission from Cass County to discharge into, or otherwise utilize, any of its county highway right of way;

- 4) That Applicants notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;

- 5) That Applicants notify the Maple River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application; and

- 6) That Applicants obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Application to Drain No. 4119 for the City of Casselton in the NW 1/4 NE 1/4 of Section 11 in Everest Township

The Board reviewed information from the State Engineer regarding *Application to Drain No. 4119* for the City of Casselton as the Applicant. Under the application, Applicant seeks to remove a ditch block in the north ditch of NDDOT's I-94 right of way in the westbound exit ramp of Exit 331. The City of Casselton utilizes this particular ditch for purposes of discharging storm sewer to the east; the discharge outlets into Swan Creek, and ultimately outlets into the Maple River.

According to records on file with the Cass County Recorder's office, the North Dakota Department of Transportation owns the north 300 feet of the NE 1/4 of Section 11 for purposes of operating its highway road ditch. Applicant is also applying for a "request for drainage on highway right of way" from the North Dakota Department of Transportation.

The Board directed its engineer, Mike Opat, to prepare responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will require Applicant to obtain permission from NDDOT for purposes of removal of the ditch block. The Board concluded that, in light of this measure, and in light of the fact that the ditch block is only in highway right of way, there will be no adverse impacts.

Manager Melvin, seconded by Manager Suhr, moved to approve *Application to Drain No. 4119* for the City of Casselton, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain written permission from the North Dakota Department of Transportation to remove the ditch block and to otherwise utilize NDDOT's highway right of way;
- 2) That Applicant notify the Maple River Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application; and
- 3) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Drain No. 201215 for Brad Olstad in the SW 1/4 of Section 25 and Section 34 in Rochester Township

The Board previously provided a *Notice of Decision* dated July 2, 2012, regarding the Board's approval of the *Application to Install a Subsurface Drain No. 201215* for Brad Olstad in the SW 1/4 of Section 25 and Section 34 in Rochester Township. The Board's approval included a number of conditions, including a requirement that Applicant must obtain signed *Assessment Agreements* from owners who will benefit from Applicant's project but who were not previously within the Cass County Drain No. 46 Assessment District.

Mary Kenward owns the NW 1/4 of Section 25 in Rochester Township, and Ms. Kenward recently indicated to Applicant and to the Maple River Water Resource District that the NW 1/4 of Section 25 is subject to a CRP contract. With that in mind, Ms. Kenward cannot and does not drain the NW 1/4 of Section 25, and Applicant's project does not benefit that parcel. With that in mind, the Maple River Water Resource District concluded Ms. Kenward need not execute an *Assessment Agreement* regarding the NW 1/4 of Section 25 as a condition to *Application to Install a Subsurface Drain No. 201215*.

It was moved by Manager Suhr and seconded by Manager Melvin to amend the Maple River Water Resource District's previous decision regarding its approval of *Application to Install a Subsurface Drain No. 201215* to exclude the NW 1/4 of Section 25 from condition 9. Condition 9 will now provide as follows:

9) That landowners of parcels that will benefit from the project, but which are not in the Cass County Drain No. 46 assessment district, consent to inclusion into Cass County Drain No. 46 maintenance assessment district; the owners of the following parcels in Rochester Township must consent to inclusion in the Drain No. 46 maintenance assessment district:

- a. E 1/2 of Section 25; Randy and Craig Suhr;
- b. SW 1/4 of Section 25: Brad and Erin Olstad;
- c. SE 1/4 of Section 26: Joe Kenward;
- d. NE 1/4 of Section 26: Murray Patterson;
- e. N 1/2 NE 1/4 of Section 35: Albert William Gunkel Trust; and
- f. NW 1/4 of Section 36: Colleen Baker Trust.

All other conditions contained in the Maple River Water Resource District's *Notice of Decision* dated July 2, 2012, are otherwise in full effect. The permit will not become effective until Applicant returns all applicable items contained in the *Notice of Decision* to the Maple River Water Resource District's office.

Upon roll call vote, the motion carried unanimously. Manager Suhr will follow up with property owners that have not yet signed the *Assessment Agreements*.

Cass County Weed Control Work Order

It was moved by Manager Melvin and seconded by Manager Suhr to approve the Cass County Weed Control Work Order form for spraying Maple River Water Resource District facilities in 2013, with the exception of item #7. Upon roll call vote, the motion carried unanimously. Manager Suhr noted cattails need to be sprayed on Drain #46 in Sections 9 and 16 of Lake Township.

Assessments with no value or tax liability

The board discussed assessments on properties with no value or tax liability. No action was taken.

2014 Budget and 2013 Maintenance Levy Assessments

The Board worked on its 2014 Budget and 2013 Maintenance Levy Assessments.

Minutes

It was moved by Manager Suhr, seconded by Manager Melvin and unanimously carried to approve the minutes of the May 2, 2013, meeting.

Bills

It was moved by Manager Melvin and seconded by Manager Suhr to approve the payment of Checks #5077 through #5087 and the electronic funds transfer, as presented. Upon roll call vote, the motion carried unanimously.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Melvin, seconded by Manager Suhr and unanimously carried to adjourn the meeting.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer